

**§ 1000.138 How are indirect cost rates determined?**

The Department's Office of the Inspector General (OIG) or other cognizant Federal agency and the Tribe/Consortium negotiate indirect cost rates. These rates are based on the provisions of the Office of Management and Budget (OMB) Circular A-87 or other applicable OMB cost circular and the provisions of Title I of Pub. L. 93-638 (See § 1000.142). These rates are used generally by all Federal agencies for contracts and grants with the Tribe/Consortium, including self-governance agreements.

**§ 1000.139 Will the established indirect cost rates always apply to new AFAs?**

No, the established indirect cost rates will not always apply to new AFAs.

(a) A Tribe's/Consortium's existing indirect cost rate should be reviewed and renegotiated with the inspector general or other cognizant agency if:

(1) Using the previously negotiated rate would include the recovery of indirect costs that are not reasonable, allocable, or allowable to the relevant program; or

(2) The previously negotiated rate would result in an under-recovery by the Tribe/Consortium.

(b) If a Tribe/Consortium has a fixed amount indirect cost agreement under OMB Circular A-87, then:

(1) Renegotiation is not required and the duration of the fixed amount agreement will be that provided for in the fixed amount agreement; or

(2) The Tribe/Consortium and bureau may negotiate an indirect cost amount or rate for use only in that AFA without the involvement of the inspector general or other cognizant agency.

**§ 1000.140 How does the Secretary determine the amount of indirect contract support costs?**

The Secretary determines the amount of indirect contract support costs by:

(a) Applying the negotiated indirect cost rate to the appropriate direct cost base;

(b) Using the provisional rate; or

(c) Negotiating the amount of indirect contract support.

**§ 1000.141 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?**

No, indirect cost rates vary from Tribe to Tribe. The Secretary should refer to the appropriate negotiated indirect cost rates for individual Tribes, that apply government-wide. Although this cost rate is not capped, the amount of funds available for inclusion is capped at the level available under the relevant appropriation.

**§ 1000.142 Instead of the negotiated indirect cost rate, is it possible to establish a fixed amount or another negotiated rate for indirect costs where funds are limited?**

Yes, OMB Circular A-87 encourages agencies to test fee-for-service alternatives. If the parties agree to a fixed price, fee-for-service agreement, then they must use OMB Circular A-87 as a guide in determining the appropriate price (OMB circulars are available at <http://www.whitehouse.gov/omb/> or see 5 CFR 1310.3). Where limited appropriated funds are available, negotiating the fixed cost option or another rate may facilitate reaching an agreement with that Tribe/Consortium.

## OTHER TERMS AND CONDITIONS

**§ 1000.143 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?**

Yes, as provided for by section 403(b)(2) and 403(c) and as necessary to meet program mandates.

## REALLOCATION, DURATION, AND AMENDMENTS

**§ 1000.144 Can a Tribe reallocate funds for a non-BIA non-Indian program?**

Yes, section 403(b) permits such reallocation upon joint agreement of the Secretary and the Tribe/Consortium.

**§ 1000.145 Do Tribes/Consortia need Secretarial approval to reallocate funds between Title-I eligible programs that the Tribe/Consortium administers under a non-BIA AFA?**

No, unless otherwise required by law, the Secretary does not have to approve